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under the New York Stock Corporation Laws. But as the bank was *bona fide*, these payments were not voidable as a preference under the bankruptcy laws. The trustee in bankruptcy brought an action to recover these payments from the bank. *Held*, that he cannot recover. *Irish v. Citizens Trust Co.*, 163 Fed. 880 (Dist. Ct., N. D. N. Y., Aug., 1908).

If the checks had not been given, the deposit would have been subject to a banker's lien, which is not the technical lien, but a mere right of set-off as to any matured debt due the bank. *Bank v. Brewing Co.*, 50 Oh. St. 151. Under the bankruptcy laws, the bank could have set off any matured debt, even against deposits made within four months of bankruptcy. *New York County Nat'l Bank v. Massey*, 192 U. S. 138. The deposit of money in a bank creates the relation of debtor and creditor, so the effect of the checks given was to decrease the obligation of the bank to the depositor. *Marine Bank v. Fulton Bank*, 2 Wall. (U. S.) 252. See *Bank v. Brewing Co.*, *supra*. But the trustee, having elected to treat these checks as void, the obligation of the bank to the depositor revived and the notes remained unpaid. And no preference existed to prevent the bank from setting up as against the trustee any claim it might possess against the depositor. The bank's right of setting off against the notes was, therefore, properly held to defeat the trustee.

BANKS AND BANKING—DEPOSITS—EFFECT OF FAILURE OF DEPOSITOR TO NOTIFY BANK OF FORGERIES.—A depositor discovered that his bank had paid and charged to his account forged checks. He failed to notify the bank promptly of the forgeries. *Held*, that he cannot recover from the bank, irrespective of whether it could have protected itself had it been promptly notified. *McNeely Co. v. Bank of North America*, 70 Atl. 891 (Pa.).

A depositor is not chargeable with any payments by his bank except such as are made in conformity with his orders. *Shipman v. State Bank*, 126 N. Y. 318. But he owes to the bank the duty of examining returned vouchers and reporting forgeries. *First Nat. Bank v. Allen*, 100 Ala. 476. *A fortiori* is it his duty to give prompt notice when he knows of the forgeries. *Dana v. Nat. Bank of the Republic*, 132 Mass. 156. The question, then, is whether a depositor who fails in this duty is estopped from claiming from the bank the amounts wrongly paid. Forbearance to exercise a right in reliance on the wrongful act of another is sufficient basis for an estoppel. *Voorhis v. Olmstead*, 66 N. Y. 113. The right to seek restoration from a forger is, in itself, a valuable one, and the depositor should be barred if it appears that owing to his wrongful acts the bank omitted to exercise that right promptly or effectively. *Leather Manufacturers' Bank v. Morgan*, 117 U. S. 96. The law assumes that had notice been given promptly, steps might have been taken to protect the bank. See *United Security, etc., Co. v. Central Nat. Bank*, 185 Pa. 596. The present case seems to fall directly within this reasoning.

CANCELLATION OF INSTRUMENTS—DEEDS: RESTORATION IN STATU QUO.—The plaintiff filed a bill for the cancellation of a deed to the defendant, which the defendant by duress had induced her to execute and deliver before her marriage to him. The defendant contended that, as the marriage was the sole consideration for the deed, restoration *in statu quo* was impossible, and that therefore the bill must fail. *Held*, that in spite of the plaintiff's inability to make any restoration, the court may order the deed cancelled. *Ring v. Ring*, 127 N. Y. App. Div. 411.

On the broad ground that he who seeks equity must do equity, it is the general rule that a party seeking to rescind a contract must restore the other party *in statu quo*. *Felt v. Bell*, 205 Ill. 213. But since the object of the rule is to do justice, it must not be carried too far: substantial restoration is all that should be required. *Mather v. Barnes*, 146 Fed. 1000, 1019. Even this will not be necessary where the wrongdoer by his own act has made impossible more than a partial restoration; for then all that can in fairness be asked is restoration to the extent of the plaintiff's ability. *Buller v. Prentiss*, 158 N. Y. 49. It follows logically, and as a final limitation of the doctrine of restoration, that if the wrongdoer has complicated matters so that no restoration at all is possible,

owing to the nature of the consideration, equitable relief should nevertheless be granted. Within this limitation the present case directly falls.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — COMMITMENT OF DEFENDANT ACQUITTED BECAUSE OF INSANITY. — A defendant was acquitted of a charge of homicide because of insanity. Under a statutory provision the court thereupon committed him to an asylum. He applied for a discharge under a writ of *habeas corpus*. The superintendent of the asylum had adjudged him still insane. *Held*, that the writ be dismissed. *People ex rel. v. Baker*, 59 N. Y. Misc. 359 (Sup. Ct.). See NOTES, p. 218.

CONSTITUTIONAL LAW — PERSONAL RIGHTS: CIVIL, POLITICAL, AND RELIGIOUS — STATUTE COMPELLING COLOR LINE IN PRIVATE SCHOOLS. — A statute made it unlawful for any person, corporation, or association of persons, to maintain a school where persons of the white and negro races were taught. A domestic corporation was convicted under the statute. *Held*, that the defendant corporation has been deprived of no right guaranteed by the federal Constitution. *Berea College v. The Commonwealth of Kentucky*, U. S. Sup. Ct., Nov. 9, 1908. See NOTES, p. 217.

CONSTITUTIONAL LAW — POLICE POWER — PROHIBITION OF POSSESSION OF GAME DURING CLOSED SEASON. — A New York statute makes possession of grouse or plover during the closed season a misdemeanor, whether the birds were taken within or without the state. The relator was arrested for having in his possession grouse and plover taken in Russia and England, and the court refused to release him on *habeas corpus*. He appealed, alleging as error that the statute is unconstitutional in that it takes property without due process and is an unjustifiable interference with interstate and foreign commerce. *Held*, that the statute is a legitimate exercise of the police power, and is not invalidated by the fact that it may indirectly interfere with interstate and foreign commerce. *State of New York v. Hesterberg*, U. S. Sup. Ct., Nov. 2, 1908.

For a discussion of the principles involved, see 17 HARV. L. REV. 418.

CONSTITUTIONAL LAW — SEPARATION OF POWERS — EXCLUSION OF ALIENS AS A JUDICIAL QUESTION. — A resident alien attempted to return after a temporary absence from the United States. Under the Immigration Act of 1903, he was excluded on the ground that he was afflicted with a dangerous disease. He brought a writ of *habeas corpus*, contending that the act does not apply to aliens formerly domiciled in this country. *Held*, that the act does so apply. *In the Matter of Hermine Crawford alias Marie Mayvis*, 40 N. Y. L. J. 419 (Dist. Ct. N. Y., Oct. 28, 1908). See NOTES, p. 221.

CONTEMPT — ACTS AND CONDUCT CONSTITUTING CONTEMPT — REFUSAL TO TESTIFY BEFORE COMMISSIONER IN DEPORTATION PROCEEDINGS. — In deportation proceedings against a Chinese a commissioner ordered him to testify as a witness in the case. He refused so to testify. *Held*, that he is guilty of contempt of the district court which appointed the commissioner. *Tom Wah v. United States*, 163 Fed. 1008 (C. C. A., Second Circ.).

Aliens have no right to enter or remain in the United States. *Fong Yue Ting v. United States*, 149 U. S. 698. Their removal is, then, not punishment; and deportation proceedings are not criminal. *United States v. Hing Quong Chow*, 53 Fed. 233. Accordingly, a statute imposing on an alien the burden of proving his right to be in the United States has been upheld as establishing a rule of civil evidence. *In re Sing Lee*, 54 Fed. 334. And a statement by a Chinese that he entered the country unlawfully is not a confession of crime. *United States v. Hung Chang*, 134 Fed. 19. The court seems, therefore, clearly right in holding that the appellant here was not a party to a criminal suit and so had no constitutional right to refuse to testify. *United States v. Hung Chang, supra*. To render proceedings before a commissioner effective there must be some way of punishing one who thus wrongfully refuses to testify. It is well settled that the commissioner cannot punish for contempt. *In re Perkins*, 100 Fed. 950. The principal case, the first